

## REMARKS/ARGUMENTS

**Specification-** The specification has been amended. The recited sequences have been added to the sequence listing and the appropriate sequence identifiers have been added to the specification.

**Claim Objections-** The claims have been amended and no longer recite the non-elected inventions or depend from non-elected claims. The current claims no longer lack proper sequence identifiers. The current claims no longer recite acronyms.

### **Claim rejections under 35 USC § 112, first paragraph**

*Claims 1, 3-11 and 13 are rejected over 35 USC §112, first paragraph as not meeting the written description requirement. The Examiner recites, "The Federal Circuit has recently clarified the application of the written description requirement. The court stated that 'A description of a representative number of cDNAs, defined by nucleotide sequence, falling within the scope of the genus or a recitation of structural features common to members of the genus, which features constitute a substantial portion of the genus.'"*

Applicants traverse. The Applicants point out that the application presents three sequences that bind to CDK. The percent identity using GCG Gap between SEQ ID NO: 1 and SEQ ID NO: 3 is 71%. The percent identity between SEQ ID NO: 1 and SEQ ID NO: 5 is 89%. The specification identifies the cyclin binding domains of three sequences on page 49, lines 18-23. The specification also identifies a second conserved domain on page 49 lines 15-18.

The USPTO addressed the "representative number" requirement in the Written Description Guidelines.

A representative number of species means that the species which are adequately described are representative of the entire genus. Thus, when there is substantial variation within the genus, one must describe a sufficient

variety of species to reflect the variation within the genus. On the other hand, **there may be situations where one species adequately supports a genus.** What constitutes a “representative number” is an inverse function of the skill and knowledge in the art. Satisfactory disclosure of a “representative number” **depends on whether one of skill in the art would recognize that the applicant was in possession of the necessary common attributes or features of the elements possessed by the members of the genus in view of the species disclosed.** For inventions in an unpredictable art, adequate written description of a genus which embraces widely variant species cannot be achieved by disclosing only one species within the genus. **Description of a representative number of species does not require the description to be of such specificity that it would provide individual support for each species that the genus embraces.**

It is noted that the USPTO Written Description Guidelines provide that there may be situations where one species adequately supports a genus. The Guidelines further state that satisfactory disclosure of a “representative number” depends on whether one of skill in the art would recognize that the applicant was in possession of the necessary common attributes or features of the elements possessed by the members of the genus in view of the species disclosed. The present claims require 80% identity to SEQ ID NO: 1. The claims do not read on “widely variant species” and therefore do not require a laundry list of potential sequences.

Therefore, one of skill in the art would recognize that the applicant was in possession of the necessary common attributes or features of the elements possessed by the members of the genus in view of the species disclosed.

*Claims 1, 3-11 and 13 are rejected over 35 USC §112, first paragraph as not meeting the written description requirement for enablement. The Examiner states that the specification does not reasonably provide enablement for expression cassette comprising a polynucleotide that encodes a polynucleotide of SEQ ID NO: 2 operably linked to a promoter wherein the nucleic acid is in an antisense orientation.*

Applicants traverse. On page 18 of the specification, lines 11-15, the references Sheehy et al., Proc. Nat'l. Acad. Sci. (USA) 85:8805-8809 (1988); and

Hiatt et al., U.S. Patent No. 4,801,340 are cited. Examples are also located on pages 42-47. Given the description enclosed in the specification, one of ordinary skill in the art is able to use the SEQ ID NO: 1 in an antisense orientation.

**Claim rejections under 35 USC § 101**

*Claims 10 and 11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.*

Claims 10 and 11 have been amended and now clearly claim the transformed seed.

**Claim rejections under 35 USC § 102**

*Claims 1, 4-9, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein et al. (WO 00/60087).*

Applicants have cancelled Claim 1, amended Claim 13 and have added new Claims 79 and 80. Claims 4-9, 13, 79, and 80 as presented are not anticipated by Klein et al.

*Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Barcelo et al.*

Applicants have amended Claims 10 and 11. The Claims as now presented are no longer anticipated by Barcelo et al.

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**Claim rejections under 35 USC § 102**

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Applicants have cancelled Claim 1, amended Claim 13 and have added new Claims 79 and 80. Claims 4-9, 13, 79, and 80 as presented are not anticipated by Klein et al.

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Applicants have amended Claims 10 and 11. The Claims as now presented ~~ARE~~ no longer anticipated by Barcelo et al.

*are*

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### **CONCLUSION**

Applicants respectfully request reconsideration. Applicants have cancelled Claim 1. Applicants have amended Claims 2-5, 10, 11, and 13. New claims 79 and 80 have been added. In view of the above comments and amendments, withdrawal of the outstanding rejections and allowance of the claims is respectfully requested.

Respectfully submitted.



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